

REVISED

MEMORANDUM

April 12, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ELIZABETH M. CORTEZ
Assistant County Counsel
Government Services Division

RE: Indra Systems, Inc. v. County of Los Angeles
Los Angeles County Superior Court Case No. BC 323293

DATE OF
INCIDENT: July 10, 2003

AUTHORITY
REQUESTED: \$237,500

COUNTY
DEPARTMENT: Registrar-Recorder/County Clerk and Internal Services Department

CLAIMS BOARD ACTION:

☐ Approve ☐ Disapprove ☐ Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on _____, 2006

SUMMARY

This is a recommendation to settle for \$237,500, the lawsuit filed by Indra Systems, Inc. ("Indra") for breach of contract arising from the issuance of a Purchase Order ("PO") by the Internal Services Department ("ISD") for electronic poll books ("EPBs") to be used by the Registrar-Recorder/County Clerk ("Registrar").

LEGAL PRINCIPLES

A public entity is responsible for breach of contract damages when an enforceable contract exists, and the public entity refuses delivery of the goods. When a breach of contract has occurred, the aggrieved party should be put in as good a position as if the party had fully performed, except that a seller still in possession of goods must make attempts to mitigate its damages by reselling or leasing the goods.

SUMMARY OF FACTS

On July 10, 2003, a PO was issued by ISD's Purchasing Division for EPBs to be used on a test basis in future elections by the Registrar. The facts surrounding the issuance of the PO and ultimate rejection of the goods by the Registrar are as follows:

- A PO was issued on July 10, 2003, based on information in the possession of ISD as of June 30, 2003, i.e. the close of the fiscal year. The PO stated a purchase price of \$3,223.07 for the economy model, and \$4,293.47 for the robust model.
- ISD and the Registrar negotiated and finalized further price reductions with Indra, and Indra submitted their reduced price offering in writing to ISD after the close of the fiscal year. Indra offered a reduced price of \$1,998 for the economy model and \$1,988 for the robust model, which the Registrar accepted.
- ISD created and issued an amended PO reflecting the price reduction that had been negotiated on August 11, 2003. However, the amended PO had an incorrect mailing address for Indra as Vienna, CA, rather than Vienna, VA. ISD cannot confirm that the amended PO was mailed or whether the amended PO

actually reached Indra. Indra claims it never received the amended PO containing the price reductions.

- The Registrar was under the mistaken impression that the PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPBs on a pilot basis. The Registrar's staff inserted language into the PO which they thought gave them the ability to decide at a later time whether to purchase any EPBs at all. This language conflicted with the other terms of the PO which indicated that an initial order of 230 units was to be purchased and any remaining quantities would be purchased at a later time at the sole discretion of the Registrar.

- On August 8, 2003, Indra communicated via email with the Registrar's project manager and other staff indicating that they acknowledged that they had been awarded the contract as indicated on the County's website, and that they had some questions but were otherwise ready to produce the products. For reasons beyond the Registrar's control, such as the unexpected special election to recall the Governor, this email went unanswered until October 16, 2003. By that time, Indra had already produced the EPBs, and were preparing for shipment.

- On November 10, 2003, Indra sent an email to the Registrar's project manager indicating that the EPBs were fully loaded with software and ready to ship. There were also many unanswered telephone calls between August and October by Indra attempting to confirm a delivery date.

- On February 17, 2004, Indra attempted delivery of the EPBs which were refused by the Registrar.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Contract Damages:	\$773,418
Interest:	\$177,953
Total	<u>\$951,371</u>

The settlement calls for the County to pay Indra \$237,500 for all of its claims and costs. The case will be dismissed with prejudice with both sides bearing their own attorney's fees.

STATUS OF CASE

The lawsuit was filed on October 21, 2004. The matter was scheduled for trial on April 26, 2006. The Court ordered the parties attend a mandatory settlement conference on April 15, 2005. The plaintiffs offered to settle the case for \$500,000, which the County refused. Further discussions appeared fruitless, ending the settlement conference. After a considerable amount of discovery, the parties agreed to attend private mediation. In January, plaintiffs made what they characterized as a final offer of \$350,000, and refused to attend the mediation. Upon motion by defense counsel, the Court ordered the parties to attend a settlement conference with Judge Owen Kwong in Department 98 on March 1, 2006. This proposed settlement was reached during the settlement conference with Judge Kwong.

In light of the proposed settlement, the Court has vacated the trial previously scheduled for April 26, 2006.

The County has incurred approximately \$75,000 for defense attorney's fees and \$11,000 in other costs.

EVALUATION

Discovery in this case has been aggressively conducted and defended by the plaintiffs. Numerous depositions have been noticed by plaintiffs, however, the County was able to postpone the depositions in hope of reaching a settlement. At trial, Indra would argue with the support of the law that the PO was a contract and bound the County to purchase the EPBs.

Indra will further argue that the initial PO at the higher price was the final memorialization of the contract. The Uniform Commercial Code provides that evidence of a prior or contemporaneous agreement is not admissible to contradict terms set in writing. As such, it is unclear whether discussions regarding the price negotiations would be admitted by the Court.

Defense counsel was able to gather evidence that Indra had leased the EPBs to mitigate its damages. As such, the EPBs are now in a used condition. The County was able to use this information in the settlement conference to reduce the damages incurred by Indra. However, at trial, Indra will argue that the

projects in which the EPBs were leased were pilot projects which did not result in any net profit to Indra after all expenses of the pilot projects are calculated.

A reasonable settlement at this time will avoid the potential that a jury trial on the issue of breach of contract could result in a verdict that substantially exceeds the proposed settlement.

We join with our private counsel, Tharpe & Howell, in recommending a settlement of this matter in the amount of \$237,500. The Registrar-Recorder/County Clerk and Internal Services Department concur in this settlement recommendation. The settlement payment will be allocated 75% from the Registrar-Recorder/County Clerk, and 25% from ISD.

APPROVED:

ELIZABETH M. CORTEZ
Assistant County Counsel
Government Services Division

EMC: JW:ds

CORRECTIVE ACTION PLAN

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REGISTRAR-RECORDER/COUNTY CLERK CORRECTIVE ACTION PLAN

LAWSUIT OF: **INDRA SYSTEMS, INC. V. COUNTY OF LOS ANGELES,
LASC Case No. BC 323293.**

INCIDENT DATE: **Purchase Order # 31031597 issued for Electronic Poll
Books on July 10, 2003; Claim Filed with Board of
Supervisors, August 10, 2004.**

INCIDENT LOCATION: **Registrar-Recorder/County Clerk headquarters, 12400
Imperial Highway, Norwalk, California 90651.**

RISK ISSUE:

A public entity is responsible for breach of contract damages when an enforceable contract exists, and the public entity refuses delivery of the goods. When a breach of contract has occurred, the aggrieved party should be put in as good of a position as if the party had fully performed, except that a seller still in possession of goods must make attempts to mitigate their damages by reselling or leasing the goods.

INCIDENT SUMMARY:

This breach of contract lawsuit was the result of the issuance of a purchase order ("PO") on July 10, 2003, by the Internal Services Department's ("ISD") Purchasing Division. The product to be purchased was electronic poll books ("EPB's") which were anticipated to be used on a test basis in future elections by the Registrar-Recorder/County Clerk ("Registrar"). A number of problems surrounding the issuance of the PO occurred as follows:

- 1) The PO stated a total order of 439 EPB units (414 of the economy model and 25 of the robust model) while at the same time an initial order of 230 units (200 economy model and 30 robust model) was stated, creating a conflict as to whether 230 units or 439 units were ordered.

CORRECTIVE ACTION PLAN

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- 2) The PO stated a purchase price of \$3,223.07 for the economy model, and \$4,293.47 for the robust model, even though further price negotiation had already been conducted between the County and Indra for a reduced price of \$1,998 for the economy model and \$1,988 for the robust model.
- 3) An amended PO reflecting the price reduction that had been previously negotiated prior to the issuance of the original PO was not created until August 11, 2003, due to the leave of absence of the original contract analyst at ISD. The amended PO was not processed in the normal electronic manner by ISD, and therefore no internal tracking of the PO could be determined.
- 4) ISD cannot confirm that the amended PO was mailed. Indra claims it never received the amended PO containing the price reductions. Both the original PO and the amended PO had an incorrect mailing address for Indra as Vienna, CA, rather than Vienna, VA. An undetermined employee had handwritten over the CA, and replaced it with VA, however it cannot be confirmed whether either PO listed the correct address and actually reached Indra.
- 5) The Registrar was under the mistaken impression that the PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPB's on a pilot basis. The Registrar's staff inserted language into the PO which they thought gave them the ability to decide at a later time whether to purchase any EPB's at all. This language conflicted with the other terms of the PO which indicated that an initial order of 230 units was to be purchased and any remaining quantities would be purchased at a later time at the sole discretion of the Registrar.
- 6) On August 8, 2003, Indra communicated via email with the Registrar's project manager and other staff indicating that they acknowledged that they had been awarded the contract as indicated on the County's website, and that they had some questions but were otherwise ready to produce the products. This email went unanswered until October 16, 2003. By that time, Indra had already produced the EPB's, and were preparing for shipment.
- 7) On November 10, 2003, Indra sent an email to the Registrar's project manager indicating that the EPB's were fully loaded with software and ready to ship. There were also many unanswered telephone calls between August and October by Indra attempting to confirm a delivery date.
- 8) On February 17, 2004, Indra attempted delivery of the EPB's which were refused by the Registrar.

CORRECTIVE ACTION PLAN

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POLICY ISSUES:

The PO was created and approved by ISD and Registrar staff members in spite of conflicting and erroneous material terms.

The Registrar was under the impression that a PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPB's on a pilot basis.

CORRECTIVE ACTION:

By August 15, 2006, the Assistant Registrar-Recorder/County Clerk, Administration, will issue a policy that no Purchase Order will be approved under any conditions if it contains terms that are inaccurate, have already been renegotiated, or need further negotiation.

By August 15, 2006, the Assistant Registrar-Recorder/County Clerk, Administration, will issue a policy that no Purchase Order will be issued solely for the purpose of encumbering funds. Incorporated within said policy will be the instructions that Departmental staff will work with appropriate central departments (i.e.: CAO, ISD, etc.) to determine the best method to encumber funds when planning for a pilot project.

By August 15, 2006, the Assistant Registrar-Recorder/County Clerk, Administration will establish clear written responsibilities for the project managers on County Purchase Order projects including but not limited to timely response(s) to vendors, particularly when material terms are in question. In the absence of a project director and/or manager, designate an alternate to act on behalf of the project director and/or manager.